

# Ambivent

## Mechanical Services

### General Terms of Purchase

#### 1. DEFINITIONS

Throughout these Conditions of Purchase the terms:

<b>Buyer</b>	Means any subsidiary company of <b>Ambivent Developments Limited</b> or another subsidiary company or Holding company of such company as “subsidiary” and “Holding Company” are defined in section 1159 Companies Act 2006 as amended, and its successors and permitted assigns.
<b>Conditions of Purchase</b>	Means the terms and conditions herein and hereinafter set out and numbered as clauses 1-16 and any additional conditions specifically incorporated into the Order in writing by the Buyer.
<b>Contract</b>	Means the contract for the sale and purchase of the Goods covered by the Order.
<b>Contract Price</b>	Shall be the lump sum specified in the Order for the provision of the Goods in accordance with the terms of the Contract.
<b>Delivery Date</b>	Means the date or dates for physical delivery of the Goods specified in the Order or any delivery schedules supplied by the Buyer to the Seller.
<b>Goods</b>	Means the subject matter of the Order including without limitation all components and materials, items, articles, things, services, delivery, testing, drawings, or work as ordered by the Buyer.
<b>Order</b>	Means the purchase order issued by the Buyer which incorporates these Conditions of Purchase.
<b>Seller</b>	Means the person, firm or company to whom the Order is addressed and issued.
<b>Works</b>	Means the works being undertaken or to be undertaken by the Buyer of which supply of the Goods forms part.

#### 2. CONTRACT TERMS

- 2.1 The acceptance of the Order by the Seller shall be subject to the Conditions of Purchase. Any variation of the Order or the Conditions of Purchase shall only be valid if confirmed in writing by the buyer.
- 2.2 The Order constitutes the entire agreement between the Buyer and the Seller with regard to the Goods to the exclusion of all other terms and conditions, including any terms and conditions which the Seller may purport to apply under any acknowledgement or condition of acceptance, save where otherwise expressly accepted in writing by the Buyer.
- 2.3 If in any particular case any clause of these Conditions of Purchase shall be held to be invalid or shall not apply to the Contract the remaining conditions shall continue in full force and effect.

### 3. GOODS

- 3.1 Without prejudice to any other rights the Buyer may have, the Seller warrants that the Goods shall conform as a quantity, quality, specification, and description with the particulars stated in the Order. The Seller undertakes fully to indemnify the Buyer against all and any losses, costs, damages and expenses including legal fees and loss of profit arising from any breach of this warranty.
- 3.2 Without prejudice to the generality of sub-clause 3.1, it is a condition of the Contract that:-
- 3.2.1 the Goods supplied by the Seller shall be of satisfactory quality;
- 3.2.2 where the Buyer makes known to the Seller the purpose for which the Goods are to be used either expressly or by implication the Goods shall be fit for that purpose;
- 3.2.3 the Goods shall be of best quality and free from defects in design, material and workmanship;
- 3.2.4 the Goods will comply with all statutory requirements and regulations relating to the sale of the Goods;
- 3.2.5 where British Standards specifications are referred to or are relevant the Goods shall comply in all respects with the relevant British Standards.
- 3.3 The Seller shall not substitute any alternative Goods or change the quantities to be supplied to the Buyer. It is the Seller's responsibility to provide suitable packaging and protection for the Goods to ensure that they reach their destination in good condition having regard to the nature of the Goods.
- 3.4 Without prejudice to any other rights or remedies which the Buyer may possess, if any defect in design, specification, materials, workmanship or operating characteristics develop during the Defects Liability and / or Maintenance Period specified in the order to the defect cannot be corrected the Seller shall replace promptly free of charge the Goods or at the Buyer's option remove the Goods and refund the full price paid and the Seller shall guarantee for a period of a further twelve months any replacement part or parts. It shall be the Seller's responsibility to ascertain from the Buyer the date of commencement of the Defects Liability and / or Maintenance Period.
- 3.5 Any specification supplied by the Buyer to the Seller or specifically produced by the Seller for the Buyer in connection with the Contract, together with the copyright, design rights or any other intellectual property rights in the specification shall be the exclusive property of the Buyer. The Seller shall not disclose to any third party or use any such specification except or as required for the purpose of the Contract.
- 3.6 The Seller shall at the request of the Buyer provide certification that the Goods provided comply with the standards or specifications required by the Order; such certification shall include where requested but shall not be limited to supportive test data or any supportive data to meet British Standards or any other standards required by the Order.
- 3.7 If the Goods do not comply with all the provisions of the Order, the Buyer may without prejudice to its other rights and remedies (in particular but without limitation under clause 12 hereof) return the Goods to the Seller or any of the Seller's agents sub-contractors or otherwise and if the Goods are returned to the Seller the Buyer shall not be liable to pay the Seller for the Goods and shall be entitled to recover all costs and expenses incurred in connection with the exercise of its rights hereunder including all costs associated with the return of the Goods to the Seller.
- 3.8 These rights are in addition to all other rights which the Buyer may have whether at common law, statute or otherwise, in connection with the supply of Goods which are defective, do not comply with their description or are not fit for their purpose.

### 4. TIME FOR DELIVERY

- 4.1 The Seller shall deliver the Goods to the address stated on the Order or any other address notified by the Buyer to the Seller in writing during the Buyer's usual business hours.
- 4.2 The Buyer shall be entitled to amend the Delivery Date without any liability for any costs whatsoever that may be incurred by the Seller as a result of the amendment to the Delivery Date.
- 4.3 Time is of the essence of the Order and failure by the Seller to deliver by the Delivery Date shall entitle the Buyer to elect to terminate the Order forthwith by serving notice to the Seller and without prejudice to its other rights and remedies shall relieve the Buyer from any obligation to accept or to pay for the Goods. The Seller hereby acknowledges and accepts that any breach by it of the Order may result in the Buyer committing breaches of and becoming liable in damages (including but not limited to liquidated damages) under the Contract and any other contracts made by the Buyer in connection with the Works and may occasion further loss and / or expense to the Buyer in connection with the Works and all such loss and / or expense is hereby agreed to be within the contemplation of the parties as being the probable result of any such breach by the Seller.
- 4.4 The Seller shall be liable for and shall indemnify the Buyer against any expense, liability, loss, claim or proceedings (including without limitation any consequential losses including loss of profits) due to or resulting from any failure on the part of the Seller its employees, agents or sub-contractors to deliver the Goods by the Delivery Date.

## 5. RISK AND TITLE

- 5.1 Risk of damage to or loss of the Goods shall pass to the Buyer upon delivery of the Goods to the Buyer in accordance with the Order.
- 5.2 The Seller shall provide adequate protection for the storage of the Goods on site and shall provide equipment suitable for the transportation of the Goods to the site and movement of the Goods once on site. The Seller shall also allow for and undertake the removal of all redundant packaging associated with the Goods from site including but not limited to any pallets, caging or other like materials.
- 5.3 The title in the Goods shall pass to the Buyer upon delivery unless payment for the Goods is made prior to the delivery, when title shall pass to the Buyer once payment has been made and the Goods have been appropriated to the Order.

## 6. PRICE

- 6.1 The Contract Price shall be a fixed price and shall only be subject to variation in the event of written agreement by the Buyer. The price shall include inter alia all charges including charges for packing, loading, transport, offloading, insurance and delivery of the Goods to the delivery address and any duties, imposts or taxes other than value added tax. The price shall be exclusive of any applicable value added tax (which shall be payable by the Buyer subject of a valid VAT invoice)
- 6.2 The Buyer shall be entitled to any discount for prompt payment, bulk purchase or volume of purchase customarily granted by the Seller, whether or not shown on the Seller's own terms and conditions of sale.

## 7. PAYMENT

- 7.1 The Buyer shall subject to its rights under these Conditions of Purchase pay the Seller the price specified in the Order no later than 60 days after delivery of the goods to the Buyer or on submission to the Buyer of an invoice from the Seller, whichever date is the later, or on such other terms as may be agreed.
- 7.2 Each invoice will quote the number of the Order.

7.3 The Buyer shall be entitled to set off against any monies otherwise due or becoming due by it to the Seller under the Contract any sums owed to the Buyer by the Seller, whether under the Contract or otherwise.

## 8. ASSIGNMENT AND SUBCONTRACTING

8.1 The Seller shall not be entitled to assign or transfer or purport to assign or transfer any of its rights or obligations under the Contract without the Buyer's prior written consent.

8.2 The Seller shall not be entitled in any way to subcontract the supply of the Goods or any major component thereof without the Buyer's written consent. No such subcontract shall relieve the Seller from its obligations under the Contract. Without prejudice to generality of clauses 8.1 or 8.2, unless otherwise agreed in writing the Buyer will have no liability to make any payment under the Order to any third party including in particular any factoring company or firm.

## 9. CANCELLATION

9.1 The Buyer shall have the right to cancel the whole or any part of the Order at any time upon giving written notice to the Seller. In the event of cancellation by the Buyer in accordance with the provisions of this clause the Buyer's liability shall be limited to the fair and reasonable open market value of any Goods accepted by the Buyer or valued at rates or prices contained in the Order whichever value shall be the lesser amount as at the date of cancellation of the Order and the Buyer shall not be liable to pay the Seller any other costs, expenses, or damages of whatsoever nature due to or resulting from the cancellation of the Order.

9.2 The Buyer shall be entitled to terminate the Contract without liability to the Seller by giving notice to the Seller at any time if the Seller:

- 9.2.1 makes a composition or arrangement with his creditors, or becomes bankrupt, or being a company:
- 9.2.2 makes a proposal for a voluntary arrangement for a composition of debts or scheme of arrangement to be approved in accordance with the Insolvency Act 1986 (or any amendment or re-enactment thereof);
- 9.2.3 has a provisional liquidator appointed;
- 9.2.4 has a winding-up order made;
- 9.2.5 passes a resolution for voluntary winding-up (except for the purposes of amalgamation or reconstruction);
- 9.2.6 has an administrator or administrative receiver appointed under the Insolvency Act 1986 (or any amendment or re-enactment thereof); or
- 9.2.7 a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1996 (or any amendment or re-enactment thereof),
- 9.2.8 the Seller ceases or threatens to cease to carry on business; or
- 9.2.9 the Buyer reasonably apprehends that any of the events mentioned above is about to occur in relation to the Seller.

Termination of the Contract shall not affect the rights and liabilities of the Buyer and the Seller accrued up to the date of termination.

## 10. OWNERSHIP

10.1 The Seller warrants that it is the owner of the Goods or is an agent of the Seller and has the authority to sell the Goods and that no third party has any claim in respect of the Goods supplied by the Seller. The Seller shall have no right whatsoever to claim or retake possession of the Goods once the Goods have been physically delivered to or paid for by the Buyer whichever is the earlier.

## 11. SAFETY

- 11.1 The Seller shall ensure that it complies with all the applicable laws, regulations and requirements relating to safety application to the Goods and that all the Seller's representatives shall take all reasonable precautions and safety measures including (without limitation) that all representatives and employees delivering to or visiting any site upon which the Buyer is employed wear personal protective equipment, including high visibility vests as may be the specific requirement of the site being visited.
- 11.2 In the event that the Seller is required to undertake any works on site, the Seller shall ensure that its employees, servants, agents, or sub-contractors possess valid CSCS cards and that the time and costs associated with any necessary site induction have been allowed for. The Seller shall also provide Risk Assessments and Method Statements as required by the Buyer in relation to any such site works.

## 12. LIABILITY AND INSURANCE

- 12.1 The Seller shall indemnify the Buyer in full against all liabilities, losses (including loss of profit), damages, costs, expenses (including legal expenses) and proceedings awarded or brought against or incurred or paid by the Buyer as a result or in connection with:
- 12.1.1 a breach by the Seller of any term or condition of the Contract or of any warranty given by the Seller in relation to the Goods;
  - 12.1.2 any claim that the Goods infringe or their importation or use or resale infringes the patent, copyright, design right, trademark or other intellectual property rights of any other person;
  - 12.1.3 any act or omission of the Seller or its employees, agents or sub-contractors in supplying, delivering or installing the Goods.
- 12.2 The Seller shall effect product liability and public liability insurance in respect of potential liabilities to the Buyer and to third parties arising out of the Contract or otherwise in the amount of [£10 million] for each and every event. The Seller shall produce evidence to the satisfaction of the Buyer of such insurances.

## 13. NON-WAIVER OF RIGHTS

- 13.1 No relaxation, forbearance, delay or indulgence by the Buyer in enforcing any of the terms and conditions herein or at law or the granting of time by the Buyer to the Seller shall prejudice, affect or restrict the rights and powers of the Buyer hereunder, nor shall any waiver by the Buyer of any breach operate as any waiver of any subsequent or continuing breach thereof.
- 13.2 No purported oral modification or restriction of the Order by the Buyer shall operate as a waiver of any of the terms of the Order.

## 14. FACTORS

- 14.1 Unless otherwise agreed in writing the Buyer will have no liability to make any payment under the Order to any third party including in particular any factoring company or firm.

## 15. LAW AND JURISDICTION

- 15.1 The terms of this Order shall be governed by and construed in accordance with the laws of England and Wales. Any dispute or difference arising out of or in relation to this Order (including for the avoidance of doubt any failure to comply therewith) shall be subject to the exclusive jurisdiction of the Courts of England and Wales.

## 16. GENERAL

- 16.1 The Buyer is a member of the group of companies whose holding company is Ambivent Developments Limited and accordingly the Buyer may perform any of its obligations or exercise any of its rights hereunder by itself or any other member of its group provided that any act or omission of any such other member shall be deemed to be the act or omission of the Buyer.
- 16.2 Any notice required or permitted to be given by either party to the other under the Conditions of Purchase shall be in writing addressed to that other party at its registered address or principal place of business or such other address as may at the relevant time have been notified pursuant to this clause to the party giving the notice.
- 16.3 No Orders for the supply of goods and / or services are to be accepted nor invoiced which are not the subject of an official Purchase Order Number issued by the Buyer's Purchasing Department.
- 16.4 All and any invoices are to be consistent in all respects with the Purchase Order to which they relate. The Purchase Order Number must be clearly stated in all instances. Any deviation from this will result in the invoice being returned and no payment shall be made against it. Any unauthorised amendments to the Order which are not the subject of an official Addendum Purchase Order will not be paid for by the Buyer.
- 16.5 All goods must be signed for by an authorised representative or employee of the Buyer. Any goods signed for that do not comply with the foregoing will not be paid for.